

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

**CERTIFIED ROSES, INC.,  
Individually and on Behalf of  
all Others Similarly Situated,**

*Plaintiffs,*

**V.**

**SYMMETRY ENERGY  
SOLUTIONS, LLC,**

***Defendant.***



**CASE NO. 2:21-cv-133**

## JURY TRIAL DEMANDED

## **PLAINTIFFS' CLASS ACTION COMPLAINT**

Plaintiffs Certified Roses, Inc., Individually and on Behalf of all Others Similarly Situated, by and through the undersigned counsel, bring this class action against Defendant Symmetry Energy Solutions, LLC. Plaintiffs make the following allegations pursuant to the investigation of counsel and based upon information and belief, except as to the allegations specifically pertaining to Certified Roses, which are based on personal knowledge.

## NATURE OF THE ACTION

1. This is a class action on behalf of all Symmetry customers who were charged excessive prices and costs for natural gas during and because of Winter Storm Uri of February 2021 (the “winter storm”). Symmetry supplied natural gas and wrongfully passed on certain costs to its customers. Symmetry saw an opportunity for profit, bypassed its contractual obligations, and took advantage of its customers during a vulnerable time. Symmetry charged Certified Roses \$248,943.48 for its gas use in February 2021, an over 2,000% increase from its February 2020 bill.

2. Symmetry substantially harmed Certified Roses and the proposed class by charging excessive prices and costs for natural gas during and because of a disaster.

### **THE PARTIES**

3. Plaintiff Certified Roses, Inc. is incorporated in Texas with its principal place of business located at 10126 United States Highway 69 North, Tyler, Smith County, Texas 75706.

4. Certified Roses also includes its agents, representatives, assignees, and employees.

5. Defendant Symmetry Energy Solutions, LLC is a Delaware limited liability company with its principal place of business located at 1111 Louisiana Street, Houston, Texas 77002. Symmetry maintains a registered agent, CT Corporation System, who can be served at 1999 Bryan Street, Suite 900, Dallas, Texas 75201.

6. Symmetry also includes its agents, representatives, assignees, and employees and includes the same for its predecessor and successor entities.

### **JURISDICTION AND VENUE**

7. This Court has subject matter jurisdiction over this action, pursuant to 28 U.S.C. §1332(d)(2), because this is a class action in which at least one member of each class is a citizen of a state different from Defendant, the amount in controversy exceeds \$5 million exclusive of interest and costs, and each of the proposed classes contains more than 100 members.

8. This Court has personal jurisdiction over Symmetry Energy Solutions, LLC because its principal place of business is in Texas. At all relevant times, Symmetry purposefully availed itself of the benefits and protections of Texas by continuously and systematically conducting business so substantial as to render it at home there. Symmetry markets and sells natural gas and transacts business in and directed towards Texas. Symmetry maintains a headquarters and is registered in Texas.

9. Pursuant to 28 U.S.C. § 1391, venue is proper because a substantial part of the events or omissions giving rise to the alleged claims occurred or originated in this District.

## FACTUAL BACKGROUND

10. Certified Roses contracted with Symmetry to provide natural gas for its business in Tyler, Texas. Ex. A, Gas Sales Agreement and Transaction Confirmation.<sup>1</sup> Symmetry is an energy supplier that provides natural gas to over 100,000 residential and commercial customers in over 30 states.<sup>2</sup> Certified Roses is an award-winning harvester and wholesaler of roses. Before the roses are shipped to customers around the world, the roses are stored at their facility in Tyler, Texas.

11. Certified Roses agreed to an index price contract with Symmetry back in 2015 and the contract terms were automatically renewed yearly. Ex. A, p. 6. The Inside FERC's Gas Market Report was to be used to calculate the price for natural gas obtained by Certified Roses. *Id.*

12. In February 2021, nearly six years after first entering the contract, Winter Storm Uri wreaked havoc in Texas and other states. Throughout the United States, 5 million people experienced power outages.<sup>3</sup> The winter storm began on February 11, 2021 and ended on February 19, 2021. The winter storm brought cold weather, including sub-freezing temperatures, snow, and ice, to a region ill-equipped to handle such conditions.

13. On February 12, 2021, Governor Greg Abbott declared a state of disaster in all Texas counties due to the winter weather. Ex. B, Proclamation. President Joseph R. Biden, Jr. later approved an emergency declaration for the same.<sup>4</sup> Texas had an additional disaster declaration in place at the time for the novel coronavirus.<sup>5</sup>

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<sup>1</sup> Certified Roses's contract was with CenterPoint Energy Services, Inc. Symmetry was formally known as CenterPoint Energy Service, Inc.

<sup>2</sup> *About Us*, <https://symmetryenergy.com/>

<sup>3</sup> Brian K. Sullivan and Naureen S. Malik, *5 Million Americans have Lost Power from Texas to North Dakota after Devastating Winter Storm* (Feb. 15, 2021, 11:02 p.m.), <https://time.com/5939633/texas-power-outage-blackouts/>

<sup>4</sup> *President Joseph R. Biden, Jr. Approves Texas Disaster Declaration* (Feb. 20, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/02/20/president-joseph-r-biden-jr-approves-texas-disaster-declaration/>

<sup>5</sup> *Governor Abbott Extends COVID-19 Disaster Declaration – February 2021* (Feb. 4, 2021, 10:05 a.m.), <https://gov.texas.gov/news/post/governor-abbott-extends-covid-19-disaster-declaration-february-2021>

14. With the freezing temperatures, people tried to heat their homes and businesses, causing the energy demand to increase significantly. In turn, there was also an increase in demand for the purchase of natural gas to service the needs of customers. Natural gas is a utility that serves critical human needs. Texas largely relies on natural gas for power and heat generation.

15. At the same time, well-head freeze offs occurred, and natural gas processing plants and pipelines failed, reducing the gas supply and limiting the ability to distribute and deliver gas.

16. During the week of the winter storm, the next-day natural gas market produced historically high prices. Overall, the natural gas market experienced a significant disruption as demand increased, supply decreased, and prices rose.

17. Around February 12, 2021, in anticipation of the market disruption, Symmetry told its customers to expect substantial increases in market prices when consuming natural gas.

18. On March 15, 2021, a month after the winter storm ended, Symmetry said to its customers: “The February invoice will, where applicable, include separate line items for the additional costs to supply your natural gas during Winter Storm Uri, including any applicable penalties assessed, to date, by the pipelines or LDCs [local distribution companies].”<sup>6</sup>

19. On March 16, 2021, Certified Roses received its February 2021 invoice, which included a line-item amount for “Incremental Supply Costs” of \$233,494.59. Ex. C, February 2021 Invoice. Symmetry passed on the supply costs it incurred when purchasing natural gas to meet demand during the winter storm. Symmetry did not have adequate amount of natural gas on hand, so, to meet its customers’ needs, it secured gas, but incurred penalties associated with curtailment.

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<sup>6</sup> *Symmetry Customer Letter* (March 15, 2021), <https://february21winterstormuri.symmetryenergy.com/wp-content/uploads/2021/03/3.15.21-Customer-Letter.pdf>; *Symmetry Energy Solutions Provides Information on Winter Storm Uri and February 2021 Billing Cycle*, <https://february21winterstormuri.symmetryenergy.com/>

20. The contract between Certified Roses and Symmetry does not mention or define “Incremental Supply Costs”. Symmetry could not provide further clarity to Certified Roses except for a breakdown of the “Incremental Supply Costs” incurred from February 10 to 22, 2021. Ex. D, February 2021 Incremental Supply Cost Detail.

21. Symmetry has treated Certified Roses and the class members unlawfully when it passed on its natural gas supply costs and charged certain prices and costs in breach of its contract.

### **CLASS ALLEGATIONS**

22. Pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(1)-(3), and/or 23(c)(4)-(5), Certified Roses, on behalf of itself and all others similarly situated, bring this class action, and seek to represent the following:

#### **Nationwide Class**

All persons or entities who purchased or obtained natural gas services from Symmetry and were charged and/or paid excessive and/or exorbitant natural gas prices and costs during and because of Winter Storm Uri of February 2021.

23. In the event the Court declines to certify the Nationwide Classes, Certified Roses, on behalf of itself and all others similarly situated, seek to represent the following:

#### **Texas Class**

All persons or entities who purchased or obtained natural gas services in Texas from Symmetry and were charged and/or paid excessive and/or exorbitant natural gas prices and costs during and because of Winter Storm Uri of February 2021.

24. Excluded from each Class is Symmetry, any entities in which Symmetry has a controlling interest, any of Symmetry’s officers, directors, or employees, any of Symmetry’s legal representatives, heirs, successors, and assigns, anyone employed with Plaintiffs’ counsels’ firms, and any Judge to whom this case is assigned and his or her immediate family.

25. **Numerosity.** Each Class is so numerous that joinder of all members is impracticable. While the exact number of Class Members is information not readily available at

this time, as only Symmetry possesses the data to determine the number of its customers who experienced excessive natural gas prices and costs during and because of the winter storm, Plaintiffs have reasonable belief that there are thousands of potential Class Members. Symmetry has 100,000 customers in over 30 states and many states were impacted by the winter storm.

26. **Typicality.** Certified Roses's claims are typical of the claims of Class Members it seeks to represent because Certified Roses and all Class Members were customers of Symmetry and incurred excessive and/or exorbitant natural gas prices and costs during and because of the winter storm.

27. **Adequacy.** Plaintiffs have retained counsel experienced in complex class action and consumer protection litigation. Certified Roses has no interests that are averse to or in conflict with other Class Members and will fully and adequately protect the interests of all Class Members.

28. **Commonality.** The questions of law and fact common to Class Members predominate over any questions that may affect only individual members, namely whether: Symmetry breached its contracts with its customers when charging excessive natural gas prices and costs; Symmetry engaged in price gouging by charging excessive natural gas prices and costs to its customers; Symmetry engaged in false, deceptive, and misleading acts and practices; Symmetry acted unconscionably; Symmetry negligently misrepresented its services offered and provided to customers; Symmetry acted negligently when failing to monitor and prevent excessive natural gas prices and costs charged to customers; Symmetry committed a breach of contract, violation under Texas's Deceptive Trade Practices Act, negligent misrepresentation, and/or negligence; Certified Roses and Class Members were harmed; and Symmetry should be subject to an injunction, declaratory judgment, and statutory and other damages.

29. **Superiority.** A class action is superior to other available methods for the fair and efficient adjudication of this controversy since joinder of all Class Members is impracticable. The prosecution of separate actions by individual Class Members would impose a heavy burden upon the courts and would create a risk of inconsistent or varying adjudications of the questions of law and fact common to each Class. A class action would achieve substantial economies of time, effort, and expense and would assure uniformity of decision with respect to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results.

30. Class Members' interest in individually controlling the prosecution of separate actions is theoretical rather than practical. Each Class is cohesive, and prosecution of the action through representatives would be unobjectionable. The damages suffered by each Class are uniform and generally formulaic, and the expense and burden of individual litigation could preclude them from fair redressal of the wrongs done to them. Plaintiffs anticipate no difficulty in the management of this action as a class action.

#### **COUNT I: BREACH OF CONTRACT**

31. The preceding paragraphs are incorporated by reference as if fully alleged herein.

32. Certified Roses has a valid, enforceable contract, the Gas Sales Agreement and Transaction Confirmation, with Symmetry. Ex. A. Certified Roses is a signatory on the contract and therefore, is a proper party to the contract. Certified Roses was a reliable Symmetry customer and performed any of its contractual obligations.

33. Symmetry breached its contract with Certified Roses.

34. Symmetry claimed Certified Roses owed \$248,943.48 for its February 2021 natural gas usage. Ex. C. Symmetry billed \$3.07 per MMBtu for 3,849 MMBtus of natural gas used. *Id.*

35. Symmetry also charged Certified Roses \$233,494.59 in “Incremental Supply Costs.” *Id.* The contract does not mention or define “Incremental Supply Costs.” Symmetry has not offered an adequate explanation for any of the charges within the February 2021 invoice.

36. Symmetry’s breach caused Certified Rose injury. Certified Rose suffered monetary loss and its injury was a natural, probable, and foreseeable consequence of Symmetry’s breach.

37. Certified Rose and Class Members seek contractual damages and any attorney fees, costs, and interest.

## **COUNT II: VIOLATION OF TEXAS DECEPTIVE TRADE PRACTICES ACT**

38. The preceding paragraphs are incorporated by reference as if fully alleged herein.

39. Symmetry acted knowingly and intentionally when violating Texas’s Deceptive Trade Practices Act, Chapter 17 of the Texas Business and Commerce Code (“DTPA”).

40. The DTPA prohibits “false, misleading, or deceptive acts or practices in the conduct of any trade or commerce . . . .” Tex. Bus. & Com. Code § 17.46(a).

41. **DTPA §§ 17.46(b)(2), (5), (7), (9), and (12)** prohibit Symmetry from: causing confusion as to the source of services; representing services have characteristics, uses, benefits or quantities that they do not have; representing services are of a particular standard if they are of another; advertising services with the intent not to sell as advertised; and representing an agreement confers rights, remedies, or obligation that it does not have.

42. Symmetry represented and led Certified Roses and Class Members to believe its natural gas service plan reflected its local market expertise. The plan would meet their budgetary needs, offer competitive pricing, and reflect a reasonable price and cost range, i.e., not be subject to severe fluctuations. Symmetry, through its advertising and marketing, misled Certified Roses and Class Members when it failed to disclose the true risks of its plan that passed through excessive



natural gas supply prices and costs. Instead, Symmetry charged its customers inflated and excessive prices and costs during and because of the winter storm.

43. Symmetry was well-aware the exposure of Certified Roses and Class Members could radically increase when the natural gas market faced inclement weather and curtailment. In such an event, Symmetry knew it would pass on the costs to its customers with no explanation. Rather than relay the truth and be transparent, Symmetry chose to downplay the plan's risk at the expense of its customers. Ultimately, Certified Roses and Class Members were unable to ascertain the extent to which they would bear the brunt of the natural gas price and cost inflation.

44. **DTPA § 17.46(b)(24)** prohibits failing to disclose information concerning a service, which was known at the time of the transaction, if intended to induce the consumer into a transaction into which the consumer would not have entered.

45. To acquire customers, Symmetry advertised and marketed its natural gas service plan as offering competitive pricing to meet customers' budgetary needs. Had they understood Symmetry's pricing scheme and the possibility of inflated and excessive prices and costs, Certified Roses and Class Members would not have agreed to Symmetry's services.

46. **DTPA § 17.46(b)(27)** disallows price gouging during a disaster. It prohibits taking advantage of a disaster, as declared under Chapter 418 of the Texas Government Code, by:

- (A) selling or leasing fuel, food, medicine, lodging, building materials, construction tools, or another necessity at an exorbitant or excessive price; or
- (B) demanding an exorbitant or excessive price in connection with the sale or lease of fuel, food, medicine, lodging, building materials, construction tools, or another necessity;

Tex. Bus. & Com. Code § 17.46(b)(27).

47. Symmetry price gouged its customers when it excessively raised natural gas prices and costs. Certified Roses and Class Members did not anticipate such increases to their natural gas

services. They relied on Symmetry's natural gas supply to their detriment, particularly amidst an unprecedented winter storm.

48. Symmetry's unlawful conduct and its excessive natural gas prices and costs were a producing cause of damages to Certified Roses and Class Members.

49. Lastly, Symmetry's charging of excessive natural gas prices and costs is unconscionable. An unconscionable act "takes advantage of the lack of knowledge, ability, experience, or capacity of the consumer to a grossly unfair degree." Tex. Bus. & Com. Code § 17.45(5). Symmetry engaged in a predatory tactic by passing on natural gas prices and costs to its customers. Certified Roses and Class Members could not appreciate the extent of Symmetry's tactic and its impact on them. Symmetry took advantage of this lack of knowledge to a grossly unfair degree when offering and selling its plans to its customers. Symmetry's unconscionable acts were a producing cause of damages.

50. Certified Rose and Class Members seek statutory damages and any attorney fees, costs, and interest.

### **COUNT III: NEGLIGENT MISREPRESENTATION**

51. The preceding paragraphs are incorporated by reference as if fully alleged herein.

52. Symmetry made several representations to Certified Roses and Class Members relating to the contract they entered into for natural gas services and while obtaining their business.

53. Symmetry represented its natural gas service plan reflected its local market expertise. The plan would meet their customers' budgetary needs, offer competitive pricing, and reflect a reasonable price and cost range, i.e., not be subject to severe fluctuations. The services would entail index pricing based off the Inside FERC's Gas Market Report and limited Utility

Transportation pass-through costs and other fees and taxes, all of which would reflect a reasonable range of price and cost differences to customers from month to month.

54. Symmetry had a pecuniary interest in making such representations, as it sought to attract customers to a trustworthy and dependable service provider and plan.

55. Symmetry's representations proved to be false. Yet, it supplied such information to guide Certified Roses and Class Members. In its February 2021 invoice to Certified Roses, Symmetry charged Certified Roses \$248,943.48 of which \$233,494.59 were "Incremental Supply Costs." Ex. C. These charges exemplify Symmetry's misrepresentation to Certified Roses. If, in February 2021, Symmetry had applied its local market expertise and offered competitive pricing that reflected a reasonable price and cost range, then Certified Roses would not be made to pay for natural gas that exceeded last year's invoice by approximately \$238,800.00.

56. Additionally, Symmetry failed to disclose the extent of risk associated with its plan. If its plan could result in over a 2,000% price increase from the previous year, Symmetry should have disclosed the possibility of such an outcome to Certified Roses and Class Members.

57. Symmetry did not exercise reasonable care or competence when communicating to Certified Roses and Class Members. The information given to them was grossly inadequate to ascertain the services and risks. Furthermore, their communication to Certified Roses and Class Member during and after the winter storm perpetuated the falsities.

58. Certified Roses and Class Members justifiably relied on the representations made by Symmetry, and Symmetry's negligent misrepresentations proximately caused them injury. Certified Rose and Class Members seek actual and exemplary damages, costs, and interest.

#### COUNT IV: NEGLIGENCE

59. The preceding paragraphs are incorporated by reference as if fully alleged herein.

60. Symmetry has a duty to apply a level of care commensurate with the foreseeable harm arising from its control and management of its natural gas services. This encompasses a duty to ensure, especially during a disaster, natural gas is not sold via Symmetry at excessive prices and costs to Certified Roses and Class Members.

61. As the winter storm disaster emerged in February 2021, it was foreseeable to Symmetry and the energy sector that natural gas prices and costs would be excessively inflated.<sup>7</sup> As early as February 12, 2021, in anticipation of the market disruption, Symmetry told its customers to expect substantial increases in market prices when consuming natural gas.

62. Symmetry had the ability, capacity, and contractual right to prevent charging customers excessive prices and costs during the disaster. Symmetry controlled its services and platform and oversaw pricing and contracting and may alter its natural gas pricing.

63. Symmetry did not exercise ordinary care and comply with existing standards of care when it charged customers excessive natural gas bills and failed to properly detect and react to the natural gas market disruption and price and cost increases.

64. Given the foreseeability of excessive prices and costs during the winter storm, a reasonable natural gas provider in Symmetry's position would implement measures to prevent its customers from being charged excessive prices and costs and taken aggressive steps to prevent it. Symmetry did not do so, and instead, responded in an ineffective manner.

65. Symmetry's negligence proximately caused damages to Certified Roses and Class Members. Had Symmetry exercised reasonable care, Certified Roses and Class Members would

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<sup>7</sup> Andrew Freedman, *Meteorologists for Texas Grid Operator Warned of the Winter Storm's Severity* (February 19, 2021, at 3:51 p.m.), <https://www.washingtonpost.com/weather/2021/02/19/texas-cold-early-warning/>

not incur excessive prices and costs for natural gas purchased from Symmetry. Certified Roses and Class Members are entitled to actual damages, costs, and interest.

#### **COUNT V: INJUNCTIVE AND DECLARATORY RELIEF**

66. The preceding paragraphs are incorporated by reference as if fully alleged herein.

67. An actual controversy has arisen and now exists between Certified Roses and Class Members, on the one hand, and Symmetry, on the other, concerning prices and costs charged for natural gas during and because of the winter storm.

68. Plaintiffs contend Symmetry charged its customers excessive prices during the winter storm and acted unconscionably. Therefore, Certified Roses requests the Court declare Symmetry's conduct unlawful and in breach of its contracts with Certified Roses and Class Members to prevent future controversies that would allow for continued injustices such as the present one, where an essential service provider took advantage of their customers and consumers.

69. Plaintiffs further seek an injunction enjoining Symmetry from (1) any engagement in the unlawful conduct of charging customers excessive prices and costs during and because of the winter storm; and (2) from billing and collecting payments from customers charged with excessive prices and costs during and because of the winter storm and ordering Symmetry to fully forgive any late or non-payments associated with such bills, including removing any negative credit reporting and penalties, and to refund any payments already made on such bills.

#### **PRAYER FOR RELIEF**

WHEREFORE, Certified Roses, individually and on behalf of all others similarly situated, request relief and judgment against Symmetry as follows:

- a. Certification of the proposed Classes: Nationwide Class and Texas Class.
- b. Appointment of the undersigned as counsel for the proposed Classes;

- c. For a judgment against Symmetry for the causes of action alleged against it;
- d. For all available damages in an amount to be proven at trial;
- e. For a declaration that Symmetry's conduct as alleged herein is unlawful and in breach of its contracts with Certified Roses and Class Members;
- f. Imposition of a constructive trust, an order granting restitution, injunctive relief, and other such equitable relief the Court deems just and proper;
- g. For all available actual, statutory, and treble damages;
- h. For exemplary and punitive damages;
- i. For pre-judgment and post-judgment interest at the maximum rate permitted by law;
- j. For Plaintiffs' reasonable attorneys' fees, costs, and expenses; and
- k. For such other relief in law or equity as the Court deems just and proper.

#### **DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a trial by jury on all issues so triable.

Respectfully submitted,

**THE POTTS LAW FIRM, LLP**

/s/ Derek H. Potts

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